



# Virginia Association of Broadcasters Legal Review



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## Legal Memorandum

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*Deadlines:*     [Some EAS Equipment in Need of Updates by June 24, 2018](#)  
                      [Expanded Video-Described Programming Rules Take Effect July 1, 2018](#)

*Developments:* [FCC Rejects “Informal Objection” to Nearly 1,000 FM Translator Apps](#)

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### EAS Alert – Your Equipment May Need an Upgrade!

From apps on our smartphones to software on our computers, we’re all reminded on a near-daily basis about the need for regular upgrades to technology. And broadcasters’ EAS (Emergency Alert System) equipment is no exception. Stations should stay up to speed with their EAS equipment and service providers to ensure they aren’t missing any critical updates.

We learned recently that broadcasters need to install, by **June 24, 2018**, updates for certain EAS equipment in order to avoid potential problems in the receipt and processing of EAS alerts. Specifically, the equipment providers Digital Alert Systems, Monroe Electronics, and Sage Alerting Systems are all reaching out to their customers advising that some of their EAS products need a new digital certificate in order to continue receiving CAP (common alerting protocol)-formatted EAS alerts from IPAWS (FEMA’s Integrated Public Alert and Warning System) and other CAP alert providers. (The current certificates are apparently designed to expire on a specific date and time.) According to manufacturer notices, updates need to be installed by June 24, 2018.

Stations should check with the manufacturers of their EAS equipment to see whether upgrades are needed. You can find information from Digital Alert Systems [here](#), Monroe Electronics [here](#), and Sage Alerting Systems [here](#). While we have not been made aware of a similar issue for [Trilithic](#) or [Gorman-Redlich](#) EAS gear, stations that use those companies’ equipment may

wish to reach out to them determine if any updates are necessary. Finally, for general, ongoing security and functionality reasons, it is a good practice for stations to periodically check-in with their EAS vendor to ensure that their gear is up-to-date from a software perspective.

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## Expanded Video Description Requirement Takes Effect July 1, 2018

Television stations that are affiliated with Big 4 Networks in the Top 60 DMAs have just a few more weeks—until July 1, 2018—before they must comply with expanded video-described programming rules. Broadcasters may recall that the FCC adopted a video-description [Report and Order](#) (“Order”) last summer that, among other things, expanded the availability of video-described programming for viewers who rely on the service.

One of the Order’s rules takes effect on July 1, 2018. Stated succinctly, the rule increases the amount of video-described programming required each calendar quarter by Big 4 Network affiliates in the Top 60 DMAs from 50 hours per calendar quarter to 87½ hours per quarter. Of the 87½ hours, 50 of those described hours will still have to be during primetime and/or children’s programming. The other 37½ hours can be any kind of programming that airs anytime between 6 a.m. and 11:59 p.m.

Historically, Big 4 Network affiliates have relied on their respective networks to provide the requisite amount of video-described programming (supplemented by certain video-described syndicated programming). Thus, if you are a Big 4 Network affiliate in a Top 60 DMA and you haven’t already received word from your network about its plans for additional video-described programming, you may wish to contact your network rep for further information.

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## FCC Rejects Informal Objection to Hundreds of FM Translator Applications

The FCC wasted little time in dismissing and denying an [Informal Objection](#) (“Informal Objection”) filed in late May by three so-called advocacy groups against almost 1,000 pending FM translator applications. In a [letter decision](#) released June 8, 2018, the Media Bureau rejected the Informal Objection filed by the low-power FM station (“LPFM”) advocacy group called Prometheus Radio Project, along with the Center for International Media Action and Common Frequency, Inc. (“Objectors”).

The FCC summed up the Objectors’ argument this way:

“Objectors argue that when Congress directed, in Section 5 of the Local Community Radio Act of 2010 (“LCRA”), that the Commission ensure that licenses are available for FM translators, FM boosters, and LPFM stations, and that those three services remain equal in status, it effectively mandated an equal apportionment of FM translator stations and LPFM stations in all markets. . . . Because, Objectors claim, none of the pending translator applicants listed in the Objection demonstrates the future availability of licenses for LPFM stations, nor demonstrates to Objectors’ satisfaction that their applications will serve the needs

of the local community, the applications must be dismissed unless such facts are demonstrated.”

The FCC rejected these arguments. From a procedural perspective, it found the Informal Objection to be overbroad, as it targeted every pending application involving an FM translator (994 of them!), even including modification applications that are not actually applications for new FM translator stations. Further, 90 of the challenged applications had either already been granted or dismissed. And, the Commission found that the Objectors failed to allege any factual basis regarding how or why the 994 FM translator applications failed to comply with the LCRA.

In addition, the FCC rejected the Objectors’ various legal conclusions, including arguments that: (1) the LCRA requires the Commission to equally apportion spectrum among FM translators, FM boosters, and LPFM stations, and (2) the LCRA requires that FM translator or LPFM applications must include a demonstration of spectrum for future LPFM or FM translator stations. The FCC explained that it had recently granted more than 2,000 LPFM new station construction permits (demonstrating that there has been adequate opportunity for such stations), and that there are fundamental differences between LPFM and translator service that make the notion of equal spectrum allocations neither desirable nor achievable.

With the Informal Objection seemingly resolved (barring some sort of appeal), we expect that the FCC will resume its processing of FM translator applications.

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If you have any questions concerning the information discussed in this memorandum, please let us know.

*Stephen Hartzell, Editor*

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